



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0258]

RIN 1625-AA00

Safety Zone; Port Los Angeles and Long Beach, San Pedro Bay, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the M/V ZHEN HUA 26 while it transits through the Port of Los Angeles – Long Beach, CA, to Long Beach Container Terminal (LBCT), LB Berth E22, then to Fenix Marine Services (FMS), LA Berth 302. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo transfer operations of four ship-to-shore gantry cranes and one rubber tire gantry crane, which will extend more than 200 feet out from the transiting vessels. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles - Long Beach, or their designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through April 20, 2023. For the purposes of enforcement, actual notice will be used from April 5, 2023, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0258 in the search box and

click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles – Long Beach; telephone (310) 357-1603, e-mail D11-SMB-SectorLALB-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because The COTP was notified of the impending arrival of the M/V ZHEN HUA 26 less than 30 days in advance and immediate action is needed to respond to the potential safety hazards associated with the transfer of large gantry cranes within the Ports of Los Angeles and Long Beach. It is impracticable to publish an NPRM because we must establish this safety zone by April 5, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of the M/V ZHEN HUA 26 while conducting oversized cargo transfer operations at LBCT, LB Berth E22, and FMS, LA Berth 302, within the Port of Los Angeles – Long Beach, CA.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 70011(b)(3). The COTP Los Angeles - Long Beach has determined that potential hazards associated with the movement of large-scale gantry crane transfer operations will be a safety concern for anyone within a 500-foot radius of the M/V ZHEN HUA 26 during its transit to LBCT, LB Berth E22, and FMS, LA Berth 302, while the vessel is within the Port of Los Angeles – Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel offloads gantry cranes in the Port of Los Angeles and Long Beach.

IV. Discussion of the Rule

This rule establishes a safety zone from April 5, 2023, through April 20, 2023, during the transit of the M/V ZEN HUA 26. While the M/V ZHEN HUA 26 is within the Port of Los Angeles – Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively, the safety zone will encompass the navigable waters around and under the vessel, from surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel. The safety zone is needed to protect personnel, mariners, and vessels from hazards associated with ship-to shore gantry crane arms which will extend more than 200 feet out from the transiting vessel. The duration of

the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the transfer operations are active.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Sector Los Angeles – Long Beach may be contacted on VHF–FM Channel 16 or (310) 521-3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This rule impacts an area of 500-feet surrounding a cargo vessel while at LBCT, LB Berth E22, for 10 days, and FMS, LA Berth 302, for 5 days during the month of April 2023. This safety zone impacts a 500-foot-radius area of the Port of Los Angeles – Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively for a limited duration. While the safety zone encompasses a fifteen-day period to account for uncertain transit delays of the M/V ZHEN HUA 26, the safety zone will only be enforced for the duration of the vessel’s inbound transit, and transit from LBCT, LB Berth E22, to FMS, LA Berth 302. Each

transit is expected to last less than 24 hours, and that period will be announced via Broadcast Notice to Mariners. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of the San Pedro Bay, Long Beach, and Los Angeles, CA.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves This rule involves a safety zone encompassing an area extending 500-feet out from a cargo vessel in vicinity of Long Beach Container Terminal and Fenix Marine Services and will last only while transfer operations are ongoing. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and

2. Add § 165.T11-123 to read as follows:

§ 165.T11-123 Safety Zone; Port of Los Angeles and Long Beach, San Pedro Bay, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of the port of Los Angeles – Long Beach, from surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel, M/V ZHEN HUA 26, during the vessel's transit within the Port of Los Angeles – Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by hailing Coast Guard Sector Los Angeles – Long Beach on VHF–FM Channel 16 or calling at (310) 521-3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This temporary safety zone will be enforced from April 5, 2023, through April 20, 2023, during the M/V ZHEN HUA 26's inbound transit and transit between Long Beach Container Terminal, LB Berth E22, to Fenix Marine Services, LA Berth 302, or as announced via Broadcast Notice to Mariners.

(e) *Informational broadcasts.* The COTP or a designated representative will

inform the public of the enforcement date and times for this safety zone via Local Notices to Mariners.

R. D. Manning

Captain, U.S. Coast Guard

Captain of the Port Sector Los Angeles - Long Beach

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